

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of American Fiber )  
Systems, Inc. for Approval of an Agreement with )  
Southwestern Bell Telephone, L.P. d/b/a ) Case No. TK-2004-0070  
SBC Missouri, Under the Telecommunications )  
Act of 1996. )

**SBC MISSOURI'S  
RESPONSE TO MITG AND STCG**

SBC Missouri<sup>1</sup> respectfully opposes the Missouri Independent Telephone Company Group's ("MITG's")<sup>2</sup> and the Small Telephone Company Group's ("STCG's")<sup>3</sup> Applications to Intervene and Requests for Hearing. No need exists for the Missouri Public Service Commission ("Commission") to hold a hearing in this proceeding or to reject any portion of the Interconnection Agreement filed by American Fiber Systems, Inc. ("American Fiber"). Moreover, MITG and STCG mischaracterize a local exchange carrier ("LEC") as an interexchange carrier ("IXC") when it permits another carrier to send its customer's traffic through that LEC to a third carrier for termination. Neither MITG nor STCG have cited any authority for this proposition. The law is just the opposite.

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri."

<sup>2</sup> The Missouri Independent Telephone Company Group consists of Alma Communications Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Company.

<sup>3</sup> The Small Telephone Company Group consists of BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company, Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

1. MITG's and STCG's Allegations Do Not Support Rejecting the American Fiber Agreement.

MITG and STCG claim that this Agreement discriminates against them.<sup>4</sup> MITG and STCG, however, have failed to allege sufficient facts that would, if proven, establish that the American Fiber Interconnection Agreement discriminates against carriers not a party to the Agreement (See, Section 252(e)(2)(A)(i) of the Telecommunications Act of 1996). They have not alleged that American Fiber refused to negotiate similar agreements with the MITG and STCG companies. In fact, there is no allegation that any MITG or STCG member company has attempted to negotiate such an agreement with American Fiber or that any of them have even attempted to contact American Fiber.

MITG also claims the American Fiber Agreement is not in the public interest “in that it is contrary to Missouri Commission Orders pertaining to the proper records to be provided to the MITG.”<sup>5</sup> STCG makes a similar claim.<sup>6</sup> To the extent MITG and STCG have concerns about records their members might need to bill and obtain compensation from the originating carrier for traffic they might receive under this agreement, SBC Missouri would submit that those concerns are presently being addressed by the Commission’s rulemaking in Case No. TX-2003-0301.

While this Agreement does not prohibit a party from sending intraLATA toll traffic through the other party’s network for termination to a third carrier’s customer, the Agreement indicates that such traffic if sent is to be handled pursuant to applicable access tariffs. Section 13.1 of Appendix Reciprocal Compensation states:

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<sup>4</sup> STCG Application, pp. 1, 5.

<sup>5</sup> MITG Application, p. 4.

<sup>6</sup> STCG Application, p. 6.

For intrastate intraLATA toll traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff, but not to exceed the compensation contained in an ILEC's tariff in whose exchange area the End User is located.

If intraLATA toll traffic were to be passed under this agreement, the intercompany compensation on that traffic would be no different than what occurs today under the MITG, STCG, SBC Missouri, and all other Missouri LEC access tariffs. When such traffic is sent by any other LEC that originates intraLATA toll calls in Missouri (e.g., CenturyTel, Fidelity, Grand River Mutual, Green Hills, New London, Spectra Communications, Sprint Missouri and SBC Missouri), it is the originating carrier -- not the carrier in the middle -- that pays the access charges to terminate its customer's call.

## 2. LECs That Provide Transiting or Intermediate Transport Are Not IXC's.

MITG inaccurately attempts to portray SBC Missouri's role under the Agreement as an IXC: "The only authority SWB has to operate in the service territory of the MITG companies pursuant to this agreement is as an interexchange carrier."<sup>7</sup> STCG makes a similar claim.<sup>8</sup>

This is simply a misstatement of the law and a misportrayal of accepted industry standards. First, SBC Missouri does not and would not "operate in the service territory of the MITG companies." Calls that American Fiber would send through SBC Missouri's network under this Agreement destined for a MITG (or STCG) member company end-user would not be terminated to that end-user by SBC Missouri. Rather, SBC Missouri only carries the call across its own network to the mutually agreed-upon meet point between its network and that of the

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<sup>7</sup> MITG Application, p. 4.

<sup>8</sup> STCG Application to Intervene, p. 8.

MITG or STCG company (usually at or near the exchange boundary between the companies). Under the access tariffs of SBC Missouri and other LECs, the originating carrier is responsible for payment of terminating access charges which are billed by the transiting and terminating LECs on a meet point basis.

Moreover, even if the existing access tariffs did not already resolve this issue, the positions of MITG and STCG are untenable. Every court that has considered this claim has flatly rejected it. In the 3 Rivers Telephone case,<sup>9</sup> small independent LECs similarly sought to impose liability on U.S. West (which, like SBC Missouri and other former primary toll carriers in Missouri, served as an intermediate tandem company) for other carriers' traffic that merely transited the tandem company's network. The U.S. District Court in Montana held that the intermediate tandem company (U.S. West) had no obligation to pay the access charges for other carriers whose calls merely traversed U.S. West's facilities:

The Court concludes that the accepted practice provides that the company liable for the terminating access charge is the company liable for the originating access charge – the company entitled to bill the end user for long distance calls. . . . Plaintiffs nevertheless argue that by "accepting" the traffic over their network, thereby "elect(ing) to treat all such traffic as its own," US WEST is liable for the terminating access charges "having received the benefit of those transactions." But where is the benefit? If US WEST is not the end-user's long distance carrier and therefore lacks the ability to receive any compensation through billing for that call, no benefit accrues to US WEST for which it should be asked to pay charges to an independent local exchange company. Moreover, Defendant advances the uncontroverted argument that the national mandatory interconnection policy *requires* that it accept the traffic from the independent local exchanges. A fair reading of 47 U.S.C. § 202 . . . supports Defendant's view. . . .

. . . to accept Plaintiff's position results in the nonsensical proposition that US WEST should be liable for payment of money owed by one plaintiff to another plaintiff simply because US WEST is acting as a transport carrier . . . The

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<sup>9</sup> 3 Rivers Telephone Cooperative, Inc. et al. v. U.S. West Communications, Inc., 125 F.Supp.2d 417, 419 (D. Montana 2000) (granting summary judgment), rev'd and remanded on other grounds, 45 Fed. Appx. 698, 2002 U.S. App. LEXIS 18196, (9<sup>th</sup> Cir. August 27, 2002) (unpublished opinion).

independent local exchange companies such as Plaintiffs need only exchange their information in order for the correct entity responsible for the access charges to be identified . . . US WEST has no obligation to pay the access charges for other long distance carriers whose calls traverse US WEST facilities.<sup>10</sup>

More recently, the U.S. District Court in Iowa, citing the 3 Rivers<sup>11</sup> decision, rejected an identical claim being made by a group of small independent LECs in Iowa:

This court finds as a matter of law that Qwest is not a beneficiary of the services INS<sup>11</sup> provides, rather, Qwest is required to carry this traffic pursuant to the national interconnection policy established by the Act to encourage competition in providing local telecommunications services. As Qwest has pointed out, the true beneficiaries to INS' services are (1) the Indy LECs<sup>12</sup> and their customers who can receive wireless calls, and (2) the wireless carriers and their customers who can make wireless calls to customers of Indy LECs. Qwest has reached agreement with the wireless carriers for compensation related to the use of the Qwest facilities.<sup>13</sup>

And as reflected in the FCC's Notice of Proposed Rulemaking in the Unified Carrier Compensation docket, it is the originating carrier (i.e., the carrier whose customer placed the call) that is responsible under current industry standards for compensating all downstream carriers involved in completing the call:

Existing access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC or CMRS, to compensate the called party's carrier for terminating the call. Hence, these interconnection regimes may be referred to as "calling-party's-network-pays" (or "CPNP"). Such CPNP arrangements, where the calling party's network pays to terminate a call, are clearly the dominant form of interconnection regulation in the United States and abroad.<sup>14</sup>

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<sup>10</sup> Id., pp. 419-420.

<sup>11</sup> INS stands for the Iowa Network Services, which is the joint network formed by the small independently owned local exchange companies in Iowa.

<sup>12</sup> The court used the term "Indy LECs" to refer to the small independently owned local exchange companies in Iowa.

<sup>13</sup> Iowa Network Services, Inc. v. Qwest Corporation, 2002 U.S. Dist. LEXIS 19830 \*48-49 (SD Iowa October 9, 2002) (granting motion to dismiss) (for convenience, this opinion is appended as Attachment 1).

<sup>14</sup> In the Matter of Developing a Unified Carrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, released April 27, 2001, para. 9 (emphasis added).

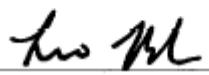
The Missouri Commission has consistently followed and applied these access charge rules in Missouri. Not only do all LEC access tariffs conform to this structure, but too so do all the interconnection agreements negotiated between CLECs and incumbent LECs in the state and which have been approved by the Commission.<sup>15</sup> Thus, even if existing access tariffs did not already resolve the purported “issue” raised by MITG and STCG, the American Fiber-SBC Missouri interconnection agreement is consistent with current industry standards and court cases.

In summary, the American Fiber Interconnection Agreement is not inconsistent with the purported issue involving intraLATA toll raised by MITG and STCG and it is not necessary to conduct any additional proceedings. Accordingly, the Commission should approve the Agreement on an expedited basis.

WHEREFORE, SBC Missouri respectfully requests the Commission not to permit intervention by MITG or STCG, and to approve the Interconnection Agreement between American Fiber and SBC Missouri.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.,  
D/B/A SBC MISSOURI

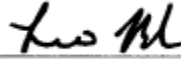
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<sup>15</sup> See, e.g., In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement Under the Telecommunications Act of 1996 with Communications Cable-Laying Company, d/b/a Dial U.S., Case No. TO-96-440, Report and Order, issued September 6, 1996 at p. 7. “When Dial U.S. becomes a facility-based provider or a mixed-mode provider of basic local exchange service, then it must make arrangements with other LECs, such as Choctaw, to terminate calls to the other LECs’ customers.”

**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on September 19, 2003.



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